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ALEXANDER L. STEVAS,
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80-1708

NO. 81-

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

THE DOW CHEMICAL COMPANY,
a Delaware corporation,
Petitioner,
vs.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and DOUGLAS M. COSTLE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(Supplemental Appendix "B")

R. L. DAVIS
Division Counsel
The Dow Chemical Company
Midland, Michigan 48640
(517) 636-4781

RICHARD FORD
WILLIAM C. POTTER, JR.
FISCHER, FRANKLIN, FORD,
SIMON & HOGG
1700 Guardian Building
Detroit, Michigan 48226
(313) 962-5210

Attorneys for Petitioner
The Dow Chemical Company

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

The following is a typeset reprint of Appendix "B" which appeared as a photostat, on pages 14 through 33, in the original Appendix to Petition for Writ of Certiorari filed on April 2, 1981.

APPENDIX "B"

EXCERPT FROM FEDERAL REGISTER

March 3, 1978 — Part II

[6560-01]

Title 40 — Protection of Environment

CHAPTER 1 — ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C — AIR PROGRAMS

[FRL 856-5]

PART 81 — AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Section 107 — Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rulemaking sets forth the attainment status of all States in relation to the national ambient air quality standards (NAAQS). The tables following this rulemaking indicate, on a State-by-State, pollutant-by-pollutant basis, the attainment status of every area as submitted by the appropriate State agency and approved, or as designated by the Environmental Protection Agency (EPA). No distinctions are made as to the severity of the violations recorded in the areas designated as nonattainment in these tables. These designations are immediately effective. EPA is soliciting comments for 60 days and will republish revised designations as appropriate.

DATES: Effective Date: Immediately.
Comments Due: May 2, 1978.

ADDRESS: General comments on these designations should be addressed to Norman L. Dunfee, Chief Control Programs Operations Branch (MD-15), Office of Air Quality Planning and Standards (OAQPS), Research Triangle Park, N.C. 27711.

Comments relative to specific State designations should be directed to the appropriate EPA Regional Office, contact as listed below:

Tom Devine, Chief, Air Branch, EPA Region I, JFK Federal Building, Boston, Mass. 02203 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).

William Baker, Chief, Air Branch, EPA Region II, 26 Federal Plaza, New York, N.Y. 10007 (New York, New Jersey, Puerto Rico, Virgin Islands).

Howard Heim, Chief, Air Branch, EPA Region III, Curtis Building' Sixth and Walnut Streets, Philadelphia, Pa. 19106 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia).

Tom Helms, Chief, Air Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308 (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina).

Jack Chicca, Chief, Air Branch, EPA Region V, 230 South Dearborn Street, Chicago, Ill. 60604 (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin).

Jack Divita, Chief, Air Branch, EPA Region VI, 1201 Elm Street, Dallas, Tex. 75270 (Arkansas, Louisiana, Oklahoma, New Mexico, Texas).

Art Spratlin, Chief, Air Branch, EPA Region VII, 1735 Baltimore Street, Kansas City, Mo. 64108 (Nebraska, Iowa, Kansas, Missouri).

Robert DeSpain, Chief, Air Branch, EPA Region VIII, 1860 Lincoln Street, Denver, Colo. 80295 (Montana, Utah, North Dakota, South Dakota, Wyoming, Colorado).

Allyn Davis, Chief, Air Branch, EPA Region IX, 215 Fremont Street, San Francisco, Calif. 94105 (California, Nevada, Arizona, Hawaii, American Samoa, Northern Mariana Islands).

Clark Gaulding, Chief, Air Branch, EPA Region X, 1200 Sixth Avenue, Seattle, Wash. 98101 (Alaska, Washington, Oregon, Idaho).

FOR FURTHER INFORMATION CONTACT:

Norman L. Dunfee, USEPA, Research Triangle Park, N.C. 27711, phone 629-5226 (FTS) or 919-541-5226 (commercial).

SUPPLEMENTARY INFORMATION:

The Clean Air Act (CAA) Amendments of 1977 place additional requirements on the States and EPA. Among them, the Amendments added section 107(d), which directed each State, within 120 days after the Amendments were enacted, to submit to the Administrator a list of the NAAQS attainment status of all areas within the State. The Administrator was required under section 107(d)(2) to promulgate the State lists, with any necessary modifications, within 60 days of their submittal.

The States are now preparing revisions to their State implementation plans (SIPs) as required by sections 110(a)(2)(I) and 172 of the Act. This enterprise, which

must be completed by January 1, 1979, requires that the States have immediate guidance as to the attainment status of the areas designated under section 107(d). Congress has acknowledged this by imposing a tight schedule on the designation process and requiring EPA to promulgate the list within 180 days of the enactment of the amendments. Under these circumstances it would be impracticable and contrary to the public interest to ignore the statutory schedule and postpone publishing these regulations until notice and comment can be effectuated. For this good cause, the Administrator has made these designations immediately effective.

The Agency recognizes, however, the importance of public involvement in the designation process. It is therefore, soliciting public comment on this rule by May 2, 1978.

Comments received will be considered carefully and revisions to the designations will be made where appropriate. The criteria used in making these designations include the following.

AIR QUALITY DATA

Section 107(d) of the CAA specified that designations should be based upon air quality levels as of enactment of the Amendments (August 7, 1977). States were required by EPA guidance to consider the most recent four quarters of monitored ambient air quality data available. If this data showed no standards violations, then the previous four quarters of monitoring data were to be examined to assure that the current indication of attainment was not the result of a single year's data reflecting unrepresentative meteorological conditions. In the absence of sufficient monitored air quality data, other evaluation methods were used, including air quality dispersion modeling.

GEOGRAPHIC SIZE

The Act specified that the designation areas could be based on air quality control regions (AQCRs) or any subportions of these areas. EPA advised States they could divide AQCRs into various nonattainment, attainment, or unclassified portions, i.e., county, subcounty, or other geographic areas as long as the area could be clearly defined in a written narrative. Additionally, a different geographic area could be used in designating the status for each pollutant.

POLLUTANT SPECIFIC CONSIDERATIONS

Subsections 107(d)(1) (A)-(E) of the CAA Amendments specified the possible categories for area designations. For both total suspended particulates (TSP) and sulfur dioxide (SO_2), an area could be designated as: (1) Not meeting the primary NAAQS, (2) not meeting the secondary NAAQS, (3) unclassifiable, and (4) attainment. For carbon monoxide (CO), photochemical O_x, and nitrogen dioxide (NO_2), designations of: (1) Not meeting the primary NAAQS, and (2) attainment/ unclassified were possible. The attainment and unclassified designations for CO/O_x/NO_2 are combined into one column for the tables presented in this notice because both designations are set forth by subsection 107(d)(1)(E) of the CAA. No designations regarding the secondary NAAQS for these pollutants were necessary since the primary standards and secondary standards are identical.

The criteria used in designation of the status of each pollutant used in addition to ambient air quality data is discussed below:

PHOTOCHEMICAL OXIDANTS

There are 105 urban areas in the United States with populations greater than 200,000. These major urban areas (except Honolulu, Hawaii, and Spokane, Wash.)

are where the oxidant problem is most severe. Honolulu has recorded eight consecutive quarters of data without a violations justifying and attainment designation. There is sufficient uncertainty regarding conditions in Spokane to warrant an unclassifiable designation for the present time. The other 103 urban areas, where over 100,000,000 people reside, consistently experience photochemical oxidant levals above the NAAQS. Due to these factors, higher priority is being given in the SIP planning process to these urban areas. Of these, only six urban areas do not have oxidant ambient air quality monitoring data. The other 97 urban areas experienced oxidant violations based on ambient data. Since 97 of the 105 urban areas greater than 200,000 with monitoring data recorded violations, the six cities without data were presumed to be nonattainment for oxidants.

Additionally, a comprehensive analysis was performed by OAQPS and other factors considered by EPA for each of the six urban areas. These analyses substantiated the presumptive nonattainment designation and these areas will be required to monitor during the 1978 oxidant season (summer-fall) to determine the magnitude of their oxidant problem.

TOTAL SUSPENDED PARTICULATES

Given the spatially limited nature of TSP violations, no general area size criteria were possible. However, States were advised that designations along political boundaries such as city limits or county lines were practical from an air quality management standpoint.

The problem of designating for rural fugitive dust areas required special consideration. EPA's fugitive dust policy recognizes the generally greater health impact due to fugitive dust in urban areas in contrast to rural areas.

In urban areas, the windblown soil contains various manmade toxic pollutants. But, rural windblown dust is usually not significantly contaminated by industrial pollutants. Therefore, for the purposes of these designations, any rural areas experiencing TSP violations which could be attributed to fugitive dust could claim attainment of the TSP NAAQS. Rural areas for this purpose are defined as those which have: (1) A lack of major industrial development or the absence of significant industrial particulate emissions, and (2) low urbanized population densities.

CARBON MONOXIDE

A designation of nonattainment for the entire urban core area of a city experiencing monitored CO violations was desirable, but smaller area designations were acceptable since CO violations are most pervasive in downtown areas of high traffic density.

SULFUR DIOXIDE AND NITROGEN DIOXIDE

Generally where EPA promulgated a designation for SO_2, the minimum area was to be the county in which the violating monitoring site was located. If States had monitoring data to substantiate the size areas they designated, they would be acceptable by EPA regardless of size.

AIR QUALITY CONTROL REGION (AQCR) REDESIGNATIONS

Section 107 of the CAA also provided for redesignation of the existing AQCR boundaries where a State determined that the redesignated areas would promote more efficient air quality management. Several States exercised this option in defining their designation areas.

Part 81 under Title 40 of the Code of Federal Regulations presently contains descriptions of all existing AQCRs and these descriptions, where feasible, will be modified in a future FEDERAL REGISTER notice to reflect the State revisions. The exact descriptions of all AQCR boundaries are available from either the appropriate State or EPA Regional Office.

EFFECT OF THE DESIGNATIONS

Section 107(d)(1)(A)-(E) sets out attainment status categories to which reference is made in Parts C (Prevention of Significant Deterioration (PSD)) and D (Nonattainment) of the CAA. Section 171(2) in Part D defines "nonattainment area" to include any area identified under subparagraphs 107(d)(1) (A)-(C), while giving the Administrator authority to add other areas based on monitoring or calculations. Similarly, areas designated under subparagraphs 107(d)(1) (D) or (E) are described in section 161, Part C, as PSD areas.

The section 107(d) designations are meant to provide a starting point for States in their efforts to correct existing air quality problems and to implement programs under the 1977 CAA Amendments. For example, a designation as a nonattainment area, in general, means that an applicable SIP must be revised, pursuant to section 172, to provide for attainment of the NAAQS as expeditiously as practicable, but not later than December 31, 1982 (December 31, 1987, under certain conditions for photochemical oxidants and/or carbon monoxide.) Under section 172(b)(6) the revised SIPs must require permits, in accordance with the provisions of section 173, for the construction and operation of major new or modified stationary sources. To be approved by the Administrator under section 110(a)(2)(I), a SIP must contain a

prohibition against major new source construction in nonattainment areas after June 30, 1979, where emissions from the source would contribute to increases in pollutants for which a NAAQS was being exceeded, unless the SIP meets the requirements of Part D at the time of the permit application. Under section 129 of the Amendments, EPA's emission offsets policy, as modified, continues to apply to major new source construction in nonattainment areas prior to July 1, 1979.

But the designation of an area as nonattainment or attainment must be considered only a point of departure and not a final, inflexible end in itself. The designations will have only limited significance for new source preconstruction review, for three reasons. First, new sources, wherever they propose to locate, must be reviewed for their impact on all nearby areas as well as that in which they would locate. If an area on which a new source would impact is designated differently than the one in which it is locating, the designation of the latter would not necessarily determine the rules to which the source would be subject. Second, PSD rules apply in any area where at least one NAAQS is attained, and since virtually every area in the country shows attainment for at least one pollutant, the PSD review will be a requisite virtually everywhere. Finally, case-by-case new source review is necessitated to account for the possibility that an area with a particular designation may encompass "pockets" which do not fit that designation.

These section 107(d) designations are subject to revision under Section 107(d)(5) whenever sufficient data is available to warrant a redesignation. Both the State and EPA can initiate changes to these designations, but any State redesignation must be submitted to EPA for concurrence. EPA will promulgate any revised list in

accordance with the requirements for this initial promulgation.

EPA REVIEW

The State submittals were reviewed by EPA for consistency with the criteria set forth in this notice. Where EPA differed with a State designation, section 107 of the CAA provides that EPA should notify the State and allow the submission of additional information. If EPA and the State could not reach agreement, an EPA designation would replace the State submitted designation. Also, in the case where a State failed to designate for any State or portion thereof the EPA would designate for the State as needed.

EPA considered all available monitoring data where it was determined to be valid. All EPA designations contained in the following tables were made within the criteria contained in this notice except in a limited number of cases where the State designations were replaced by unclassifiable designations by the appropriate Regional Offices on the basis that a major source in each county was utilizing a possibly unauthorized dispersion technique. Since EPA has not finalized its tall stack policy regulations to implement Section 123, it is presently unknown whether the sources can claim full credit for their existing stacks.

EPA designations are indicated in the following tables by the asterisks accompanying the designations: * means a Federal EPA designation replaced a State recommendation. This * is used where either the designation status or the area size was modified by EPA: ** means solely a Federal designation where a State failed to submit their own recommendation. In some instances, the descriptions of the designated areas submitted by the

States were so lengthy as to prohibit their publication in the limited space available in the tables presented below. Exact descriptions of all areas designated are available at the appropriate Regional Offices or the State in question. In some of the following tables, States referenced AQCRs by their appropriate number instead of their title. An Appendix A is included in the regulatory section of this rulemaking which gives both the AQCR name and number for ease of reference.

A summary of the approved designations for the 3215 counties or county equivalents covered by these designations is presented below:

	TSP	SO_2	CO	O_x	NC_2
Number of counties either totally or partially approved or designated by EPA as nonattainment	421	101	190	607	8

Dated: February 23, 1978.

DOUGLAS M. COSTLE,
Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding Subpart C and Appendix A as follows:

Subpart C — Section 107 Attainment Status Designations

Sec.
81.300 Scope.
81.301 Alabama.
81.302 Alaska.
81.303 Arizona.
81.304 Arkansas.
81.305 California.
81.306 Colorado.

Sec.
81.307 Connecticut.
81.308 Delaware.
81.309 District of Columbia.
81.310 Florida.
81.311 Georgia.
81.312 Hawaii.
81.313 Idaho.
81.314 Illinois.
81.315 Indiana.
81.316 Iowa.
81.317 Kansas.
81.318 Kentucky.
81.319 Louisiana.
81.320 Maine.
81.321 Maryland.
81.322 Massachusetts.
81.323 Michigan.
81.324 Minnesota.
81.325 Mississippi.
81.326 Missouri.

Sec.

81.327 Montana.
81.328 Nebraska.
81.329 Nevada.
81.330 New Hampshire.
81.331 New Jersey.
81.332 New Mexico.
81.333 New York.
81.334 North Carolina.
81.335 North Dakota.
81.336 Ohio.
81.337 Oklahoma.
81.338 Oregon.
81.339 Pennsylvania.
81.340 Rhode Island.
81.341 South Carolina.
81.342 South Dakota.
81.343 Tennessee.
81.344 Texas.
81.345 Utah.
81.346 Vermont.
81.347 Virginia.
81.348 Washington.
81.349 West Virginia.
81.350 Wisconsin.
81.351 Wyoming.
81.352 American Samoa.
81.353 Guam.
81.354 Northern Mariana Islands.
81.355 Puerto Rico.
81.356 U.S. Virgin Islands.

APPENDIX A — Air Quality Control Regions (AQCR's).

AUTHORITY: Secs. 107, 301, of the Clean Air Act, as amended (42 U.S.C. 7407, 7601).

Subpart C — Section 107 Attainment Status Designations

§ 81.300 Scope.

Attainment status designations as approved or designated by the Environmental Protection Agency (EPA) pursuant to Section 107 of the Act are listed in this subpart. Area designations are subject to revision whenever sufficient data becomes available to warrant a redesignation. Both the State and EPA can initiate changes to these designations, but any State redesignation must be submitted to EPA for concurrence.

§ 81.323 Michigan

Michigan — TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 82 (Michigan Portion) Except sub-areas defined by range and township numbers:				X
1. Berrien County R18W, T4S, Sections 7, 8, 17-20, 29, 30 R19W, T4S, Sections 12-14 & 23-27		X		
AQCR 122 Except sub-areas defined:				X
1. Bay County R5E, T14N, Sections 14-16 & 21-23		X		
2. Genesee County a. Starting at intersection of Stewart Av. and N. Saginaw St. then E. along Stewart Av. to Dort Highway to Franklin Av. to Hamilton Av. to Saginaw St. to Stewart Av.	X*			
b. Starting at intersection of Carpenter Rd. and DuPont St. then E. on Carpenter Rd. to Center Rd. then S. to M-21 then E. to I-475 to Bristol Rd. then W. to I-75 then N. to Corunna Rd. (M-56) then E. to Flint city limits then N. to Pasadena Av. then E. to DuPont St. to Carpenter Rd.		X*		

*EPA designation replaces State designation

Michigan — TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
3. Kent County R11W, T7N, Sections 19, 30, 31 R12W, T7N, Sections 22-27 & 34-36		X		
4. Mason County R18W, T18N, Sections 13,14, 23 & 24		X		
5. Midland County R2E, T14N, Sections 13-15, 21-23, 26-28 & 33-35		X		
6. Muskegon County R16W. T9N. Sections 21, 22 & 27-34		X		
7. Saginaw County a. R4E, T21N, Sections 1, 12-15, 22-27 & 34-36 R5E, T12N, Sections 4-6, 9, 16, 19-21 & 28-33		X		
b. R5E, T12N, Sections 7, 8, 17 & 18	X			
AQCR 123 Except sub-areas defined:				X
1. Macomb County a. R14E, T4N, Sections 247, 28, 33, & 34		X		
b. All of County South of 20 Mile Rd.		X		

Michigan — TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
2. Oakland County a. R10E, T3N, Sections 15, 16, 21, 22, 27 & 28		X		
b. Area included within: Coolidge Rd. 10 Mile Rd. Campbell Rd. 14 Mile Rd. Dequindre Rd. & 8 Mile Rd.		X		
3. St. Clair County R17E, T6N, Sections 2-4 9-11, 14-16, 21 22 & 28		X		
4. Wayne County a. Area included within: Lake St. Clair 8 mile Rd. to Schaeffer Rd. to McNichols Rd. to Greenfield Av. to Evergreen Rd. to Joy Rd. to Telegraph Rd. to Ford Rd., to Beech-Daly Rd. to Cherry Hill Rd. to Inkster Rd. to Carlysle St. to Middle Belt Rd. to Van Born Rd. to Wayne Rd. to Ecorse Rd. to Haggerty Hwy. to Tyler Rd. to Belleville Rd. to I-94 to Rawsonville to Oakville — Waltz Rd. to Will — Carlton Rd. to the Huron River to Lake area except for the subarea under b.		X		

Michigan — TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
b. Area included within: Lake St. Clair-Moross Rd. to 7 Mile Rd. to Van Dyke Rd. to 8 Mile Rd. to Wyoming Rd. to 7 Mile Rd. to Schaffer Rd. to Fenkell Rd. to Greenfield Av. to Joy Rd. to Southfield Expressway to Ford Rd. to Cherry Hill Rd. to Beech-Daly Rd. to Michigan Av. to Inkster Rd. to Carlysle St. to Middle Belt Rd. to Sibley Rd. to Telegraph Rd. to King Rd. to Grange Rd. to Sibley Rd. to Jefferson Av. to Bridge St. (Gross Ile) extended to Detroit River)	X			
AQCR 124 (Michigan Portion) Except sub-area defined by following townships:				X
1. Monroe County Exeter, Ash, Berlin, Raisinville, Monroe & Frenchtown Townships including all incorporated municipalities		X		
AQCR 125				
Except sub-areas defined:				X
1. Branch County R6W. T6S, Section 22		X		
2. Calhoun County R4W, T25, Section 34	X			
3. Ingham County R2W; T4N, Sections 2-11 & 14-23		X		

Michigan — TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
4. Washtenaw County Area near Ypsilanti within Cross St., Huron St., Harris Rd. & I-94		X		
AQCR 126				X
1. Delta County R22W, T39N, Sections 6-8, 17-20, 29-30				
R23W, T39N Sections 1, 12 & 13		X		
2. Emmet County R6W, T34N Sections 1-3 & 9-12				
3. Manistee County R16W, T21N Sections 7, 18 & 19		X		
R17W, T21N, Section 12 & 13		X		
4. Marquette County R25W, T48N Section 1 & 2			X	

Michigan — SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 82 (Michigan portion)				X
AQCR 122				
Except sub-areas defined				X
1. Ingham County	X*			
2. Midland County	X*			
AQCR 123				X
AQCR 124 (Michigan portion)				X
AQCR 125				X
AQCR 126				X

*EPA designation replaces State designation

Michigan O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 82 (Michigan portion)	X	
AQCR 122		
Except sub-area defined:		X
1. Muskegon, Ottawa, Allegan, Kent, Montcalm, Ionia, Gratiot, Midland, Bay, Saginaw, Shiawasee, Genesse, Tuscola, Lapeer, Sanilac and Huron Counties	X	
AQCR 123	X	
AQCR 124 (Michigan portion)	X	
AQCR 125	X	
AQCR 126		
Except sub-area defined:		X
1. Marquette County	X*	

*EPA designations replace State designations

Michigan — CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 82 (Michigan portion)		X
AQCR 122		
Except sub-area defined:		X
1. Saginaw County R4E, T12N Sections 1, 12, 13 & 24 R5E, T12N Sections 4-9, 16-21	X	
AQCR 123		
Except sub-area defined:		X
1. Macomb, Oakland, Wayne Counties Lake St. Clair — 14 Mile Rd. to Kelly Rd. N. to 15 Mile Rd. to Hayes Rd. S. to 14 Mile Rd. to Clawson northern city boundary to Royal Oak northern city boundary to 13 Mile Rd. to Evergreen Rd. to Beverly Hills southern city boundary to Bingham Farms southern city boundary to Franklin southern city boundary to Inkster Rd. to 8 Mile Rd. to Livonia western city boundary to Wayne western city boundary to Romulus southern city boundary following Pennsylvania Rd. to Detroit River.	X	
AQCR 124 Michigan portion		X
AQCR 125		X
AQCR 126		X

Michigan — NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
State of Michigan		X

EXCERPT FROM FEDERAL REGISTER

March 26, 1980

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52
[FRL 1445-7]

Approval and Promulgation of Implementation Plans; Disapproval of Proposed Revision to Michigan Plan

AGENCY: Environmental Protection Agency.

ACTION: Disapproval of proposed revision.

SUMMARY: This action disapproves a proposed revision to the Michigan State Implementation Plan (SIP) submitted to the U.S. Environmental Protection Agency (USEPA) by the Michigan Department of Natural Resources (MDNR) pursuant to Section 110(a)(3) of the Clean Air Act, 42 U.S.C. 7410(a)(3). The revision, in the form of a Final Order issued February 13, 1979 by the Michigan Air Pollution Control Commission (MAPCC), proposed to extend the compliance date to December 31, 1982 for Dow Chemical Company (Dow) of Midland, Michigan to meet the State emission limits for the sulfur dioxide, particulate matter, and visual emissions. In order to control emissions before December 31, 1982 the Order permitted Dow to utilize a Supplementary Control System (SCS).

FOR FURTHER INFORMATION CONTACT: Gary Gulezian, Acting Chief, Regulatory Analysis Section, Air Programs Branch, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6053.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 1979 the Michigan Air Pollution Control Commission (MAPCC) submitted to USEPA a proposed revision to Michigan's State Implementation Plan (SIP). The revision was in the form of a Final Order issued by MAPCC after Dow and the MDNR had entered into a Stipulation for Entry of a Consent Order.

In the Consent Order Dow acknowledged "that it is presently the source of the emissions which result in all significant ambient air concentrations of sulfur dioxide in and around Midland, Michigan," and agreed with the MAPCC that "Federal Ambient Air Quality Standards for sulfur dioxide are presently being met in and around Midland, Michigan, because of the operation of an SCR [Supplementary or Intermittent Control System] by Dow." Supplementary or Intermittent Control Systems are described in the Order as "systems which limit the rate of pollutant emissions during periods when meteorological conditions conducive to ambient ground level concentrations in excess of levels specified in subparagraph (iii) are anticipated." The ambient ground level concentrations specified in subparagraph (iii) are the same as the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (a running 24-hour average of 0.14 ppm, an annual arithmetic mean of 0.03 ppm, and a running 3-hour average of 0.50 ppm) with the exception that no exceedances are allowed. In order to keep from exceeding these concentrations, subparagraph (iii) of the Order provides further that "Dow shall utilize low sulfur fuel, load reduction, plant shut down, or other measures **

The Order provided that by December 31, 1982, Dow would be in continuous compliance with the present State emission standards through the purchase of process steam and electricity or by burning fuel which would result in compliance; but, until that time Dow would be exempt from the State emission limitations for sulfur dioxide, particulates and opacity.

At the present time the federally-approved Michigan Implementation Plan provides that Dow achieve compliance with sulfur dioxide emission standards by July 1, 1975, and with particulate emission standards by April 1, 1975. See 40 CFR 52.1175(d).

On May 17, 1974 Dow and MAPCC entered into a Consent Order which provided that Dow could temporarily operate a SCS until July 1, 1980, to meet NAAQS for sulfur dioxide; that, until July 1, 1980, Dow was exempt from the State emission limitations for sulfur dioxide (SO_2) and, that Dow would, in the interim, purchase and install equipment on its coal-fired boilers so as to enable Dow to shift the use of fuels from coal to oil or natural gas when it was determined through the use of its SCS that the weather was conducive to ground level concentrations in excess of NAAQS. This Consent Order was never submitted to USEPA as a SIP revision.

On July 21, 1977, Dow and MAPCC entered into a new Consent Order. This Order authorized Dow to continue operation of its existing system (switching from coal to oil or gas when meteorological conditions conducive to ground level concentrations in excess of NAAQS exist) until July 1, 1980, at which time Dow agreed to eliminate coal as a fuel in its power plants and substitute compliance fuels, primiarly oil.[1] The 1977 Consent Order was the subject of litigation (*Dow Chemical v. Costle*, No. 78-10019, E.D. Mich.), wherein the District Court

determined that the review of the Consent Order as a proposed SIP revision by USEPA could not be accomplished until the MAPCC had completed the record and submitted it to USEPA for review. Instead of completing the record for the 1977 Consent Order, Dow and the MAPCC entered into negotiations for a new Consent Order and on February 14, 1979 Consent Order APC No. 01-1979 was formally submitted by MAPCC to USEPA as a proposed SIP revision.

In August 1977, Congress amended the Clean Air Act (Act) to require the designation of areas in each state where the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), photochemical oxidents (ozone), and nitrogen dioxide (NO_2) were not being met. See Section 107(d) of the Act, 42 U.S.C. § 7407. An area in Midland County, Michigan, where Dow is located, was designated as a nonattainment area for both the primary and secondary SO_2 NAAQS and for the secondary TSP NAAQS. See 43 FR 8692, dated March 3, 1978, and 43 FR 45993 dated October 5, 1978. Thereafter, the State of Michigan submitted its part D implementation plan to attain and maintain sulfur dioxide and particulate NAAQS in the nonattainment areas. In its submittal the State indicated that its part D control strategy for SO_2 nonattainment areas was to eliminate supplemental control systems and to require "constant emission control systems." [2] This was to be accomplished by Consent Orders, such as APC No. 01-1979 previously submitted February 14, 1979, to USEPA as a proposed SIP revision. USEPA's review of

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[1] Comments by the Dow Chemical Company, August 2, 1979, p. 6.

Order No. 01-1979 as a part D SIP review is the subject of a separate notice of proposed rulemaking published 45 FR 9752 (February 13, 1980).

On June 19, 1979 USEPA published at 44 FR 35263 a Proposed Disapproval of the proposed site specific SIP revision on the basis that the Consent Order did not contain constant control devices for the continuous reduction of emissions but, instead, permitted Dow to vary its emissions of sulfur dioxide and particulates according to atmospheric conditions.

II. Public Comments

In response to the proposed disapproval of the proposed SIP revision comments were received from Dow Chemical Company and from the American Lung Association of Michigan. Dow's comments urged approval of the proposed SIP revision and made the following arguments:

1. The proposed revision is approvable because it meets the requirements of Sections 110(a)(2) and Sections 302(k) and (m) of the Clean Air Act.

2. In the event that Dow's system is determined to be a SCS and barred by Section 123 of the Act as a final means of compliance, Section 123 does not bar the use of the SCS as an interim means of compliance.

3. The designation of the Midland, Michigan area as a nonattainment area for sulfur dioxide and particulate NAAQS is in error.

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[2] State of Michigan Air Quality Implementation Plan dated May 1, 1979, p. 5-2.

4. The proposed revision should be approved because of equitable considerations.

5. Since the supplementary control system enables Dow to keep from violating NAAQS, "no significant health effects would be presented by controlling Dow-Midland sulfur dioxide emissions below the SCS level."[3]

The comments of the American Lung Association of Michigan supported disapproval of the Consent Order as a SIP revision and stressed the following points:

(1) The Order is contrary to law in that it permits reliance on a SCS for control of emissions from the Dow-Midland complex.

(2) The period during which Dow is permitted to use the SCS to control emissions does not qualify as an interim period under the Clean Air Act or case law.

(3) The Consent Order does not satisfy the SIP requirements of Section 172 of the Clean Air Act for nonattainment areas.

(4) The Consent Order does not provide for adequate emission monitoring for enforcement purposes.

(5) It would be inequitable to approve the Consent Order as a SIP revision.

As set forth below, the comments of Dow do not justify approval of the Consent Order as a SIP revision.

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[3] Health and Welfare Benefits of Continuous Control of Sulfur Dioxide emissions, prepared for Dow Chemical Co., November 17, 1978.

1. Requirements of Section 110(a)(3)(A) and Sections 302(k) and 302(m) of the Clean Air Act

A. Section 110(a)(3)(A) of the Clean Air Act provides for approval of SIP revisions by the Administrator if the revision "meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings." Paragraph (2) refers to Section 110(a)(2) which requires in subparagraph (B) that the revision contain "emission limitations * * * and such other measures as may be necessary to insure attainment of such primary or secondary standard * * * ." Section 302(k) defines "emission limitation" and "emission standard" as "a requirement * * * which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis * * * ," and Section 302(m) defines "means of emission limitation" as "a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics)."

Although Dow and the MAPCC continuously refer to Dow's means of emission limitation as a Supplementary Control System,[4] Dow claims in its comments that Dow's system is not a SCS and that the Consent Order contains a proper "emission limitation" in that it establishes a "concentration" of pollutant which Dow is required to achieve. The "emission limitation," and/or "concentration," in the Consent Order are the primary and secondary National Ambient Air Quality Standards for sulfur dioxide with the exception that any exceedance of the Standards is considered a violation. Dow comments further that its system is not a SCS because it reduces emissions and insures continuous compliance with the NAAQS numerical limitations.[5]

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[4] Consent Order APC No. 1-1979 and Dow's Comments dated August 2, 1979.

Dow describes its SCS as a process by which information from eight SO_2 analyzers located in the City of Midland, from meteorological instruments in a tower located near the company, and from its boiler operation are fed into a computer which provides data to a consultant in Boston. The consultant uses this information to forecast the air quality impact of Dow's planned boiler operations. When the consultant determines which fuel must be burned in order to maintain NAAQS under the meteorological conditions in Midland, the information is sent back to the Dow computer for transmission to the Dow Utilities Control Room. The individuals in charge of the boiler operations then switch certain boilers to the fuel necessary to maintain NAAQS. Dow, in its comments stressed the ability of its SCS to keep Dow from violating NAAQS and alleged that because of this effectiveness Dow's SCS was not the type of SCS that Congress intended to ban by adding Section 123 of the Clean Air Act.

The Act requires more than continuous compliance with the NAAQS. Section 110(a)(2)(B) requires the use of emission limitations to insure attainment and maintenance of the NAAQS. Emission limitation, as defined in Section 302(k) and 302(m) of the Act requires "continuous emission reduction." Under Section 123 of the Act the degree of emission limitation required to meet the standards cannot be affected by a dispersion technique.

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[5] The concentration levels in the Consent Order will be referred to as to NAAQS hereafter for purposes of brevity although it is understood that the difference between the requirements in the Consent Orders and NAAQS is that the Consent Order states that any exceedance of the 24-hour standard is a violation, whereas NAAQS permit one exceedance of the 24-hour and 3-hour standards before the exceedances are considered a violation.

It is USEPA's determination, that Dow's system does not require continuous emission reduction and that it is designed so as to allow Dow to vary the fuel mix used by its boilers to the extent that it is necessary to keep from exceeding NAAQS.[6]

Such a system is a "dispersion technique"as described in Section 123 of the Act, i.e., "any intermittent or supplemental control of air pollutants varying with atmospheric conditions," and thus cannot be considered in determining the degree of emission limitation that Dow is required to meet. Furthermore, the Consent Order states that "Dow and the Commission agree that Federal Ambient Air Quality Standards are being met in and around Midland, Michigan, because of operation of an SCS by Dow."

Dow comments that the use of fuels may be a means of emission limitation. For the use of fuels, however, to be a proper means of compliance, the proposed SIP revision must identify the specific fuel mix to be used and include a demonstration that use of specific fuels at maximum operating conditions and "worst case" meteorology would not cause a violation of the NAAQS for either sulfur dioxide or particulates.

The proposed SIP revision that MAPCC has submitted to USEPA for approval/disapproval is deficient in that it contains no demonstration that the sulfur dioxide and particulate NAAQS would be protected without the use of Dow's SCS, a "dispersion technique."

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[6] See Dow's comments (July 20, 1979, p. 6) "This mixture of fuel varies as the concentration of the pollutant varies so that at no time is the limitation [SO_2 NAAQS] violated."

B. Dow comments that the proposed revision contains a proper emission limitation because Dow cannot exceed the SO_2 NAAQS. Dow claims this limitation [NAAQS] is a "concentration" of pollutant which Dow is required to achieve and thus is an "emission limitation" which meets the requirements of Sections 110(a)(2) and 302(k) of the Act. It is USEPA's position that the Clean Air Act not only requires compliance with the national ambient air quality standards, which are ground level concentrations, but also with emission limitations, which limit the amount of pollutants emitted by a source (42 U.S.C. 7410(a)(2) (A) and (B). Emission limitations, as applied to a source, must "assure continuous emission reduction" 42 U.S.C. 7602(k) and (m). Dow is required to comply with both ground level concentrations (ambient standards) and emission limitations designed to attain the ambient standards. Compliance by Dow with ground level concentrations of the SO_2 NAAQS does not constitute compliance with its emission limitation in the federally approved SIP. The Order which requires only compliance with the ground level concentrations of the SO_2 NAAQS does not meet the statutory requirements of Section 110(a)(2)(B) (42 U.S.C. 7410(a)(2)(B)).

The proposed revision is also deficient in that it does not contain any emission limitations for particulates or visual emissions.

2. *Interim Use of Supplementary Control Systems*

Dow comments on page 3 of its July 20, 1979 counsel's letter to USEPA that "Regardless, therefore, of whether the System is continuous means of emission control, EPA should permit the use of it in the interim"; and that nothing in the Clean Air Act nor case law prohibits the use of SCS on an interim basis. In support of its position

Dow cites several cases decided prior to the 1977 Amendments. Congress was aware of those cases when it passed the 1977 Amendments and chose to narrow substantially the circumstances where dispersion techniques were permissible.

USEPA has stated that "apart from the limited circumstances of sections 113(d) and 119, and the narrow exceptions of Section 123, dispersion technology cannot be employed in lieu of constant controls for any purpose under the Act." See 1977 Clean Air Act Amendments for Stack Heights, Notice of Proposed Rulemaking 44 FR 2608, January 12, 1979. It is USEPA's position that Congress, in the 1977 Amendments to the Act, permitted interim use of a SCS only as part of a Section 113(d) delayed compliance order or a primary nonferous smelter order under Section 119. Sections 113(d) and 119, 42 U.S.C. 7413(d), and 7419. American Lung in its comments agrees with USEPA's position.

3. Nonattainment Designation and Requirements of Part D of the Act

Dow maintains that the area in which its plant is located in Midland, Michigan, is an attainment area for NAAQS because of monitoring data recorded while Dow was using its SCS. USEPA has designated the area as a nonattainment area because Dow has failed to comply with its required emission limitations. Dow's reliance on SCS to avoid ambient standard violations is an impermissible way to attain national standards. See Sections 110(a)(2)(B), 123(a) and 302(k) and (m).

American Lung's comments stressed disapproval of Dow's Order No. 01-1979 under Part D of the Act. USEPA agrees and has proposed disapproval of the Order for failure to meet Part D requirements in a Notice

of Proposed Rulemaking published February 13, 1980 (45 FR 9752).

American Lung's comments, which pertain to the requirements of Part D, and other comments received in response to the proposed disapproval under Part D will be considered in USEPA's final rulemaking on that proposed disapproval.

4. *Equitable Considerations*

Dow stresses that USEPA's position is inequitable in that Dow is being penalized for its use of less than "Good Engineering Practice" stacks; that USEPA's disapproval will not result in any improvement in the public health and welfare in the public area; and that it would waste a critical national resource.

Dow's policy has been to rely on the possibility of purchasing process steam from a nuclear plant to be constructed by Consumers Power Company near Dow's Midland, Michigan industrial facilities. The nuclear facility was to have been operational by 1974-1975. When it became obvious that this operational date was not possible Dow sought to extend its compliance date for meeting the sulfur dioxide and particulate emission limits in the Michigan State Implementation Plan through Stipulation and Entry of Consent Orders with the MAPCC, which Consent Orders permitted Dow to attain and maintain NAAQS thorugh the use of a SCS. These Consent Orders were not submitted to USEPA as SIP revisions. Dow has insisted on this approach even though it has been informed by both the MAPCC and

USEPA that operation of a SCS in lieu of continuous emission controls was not an acceptable means of emission control.[7]

In the July 21, 1977 Consent Order, Dow agreed to achieve compliance by July 1, 1980 with the State emission limits for particulate matter, opacity, and sulfur dioxide. Compliance was to have been achieved through the use of compliance fuels. In this Order Dow did not make any claim that it was economically infeasible to achieve compliance by switching to compliance fuels in 1980. Instead of taking steps which would enable Dow to achieve final compliance by switching to compliance fuels in 1980, the Company negotiated further Consent Orders, the last of which extended the compliance date to December 31, 1982. Instead of implementing its SCS, Dow could have chosen other means of compliance in the early 1970's when it became apparent that the start up of the nuclear plant was beyond Dow's control. Dow can still select other means of compliance which meet the requirements of the Clean Air Act, i.e., continuous emission reduction.

Dow claims that it is inequitable for USEPA to expect Dow to comply with the requirements of the Clean Air Act. The Act does not empower USEPA to consider equities in fulfilling its statutory mandate. The Act provides that USEPA is to approve a SIP revision if, among other things, it contains a demonstration that NAAQS, both primary and secondary, will be attained and maintained through emission limitations. Such a demonstration must be made by approved modeling or

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[7] 41 FR 7450, Stack Height Increase Guildlines issued February 18, 1976; Notice of Violation EPA-5-77-A-13 issued November 18, 1976 by James O. McDonald, Director of Enforcement, Region V, USEPA; Answer of MAPCC to Dow's Complaint filed in *Dow Chemical Co. v. Reizen, et al.*, Michigan Court of Appeals No. 77-4792, United States District Court, Western District of Michigan, Southern Division (December, 1977), and USEPA correspondence with Dow in 1977.

monitoring techniques which cannot be affected by any dispersion techniques as defined by Section 123 of the Act. The February 14, 1979, Consent Order submitted as a proposed SIP revision does not contain this demonstration. Because the proposed revision permits Dow to use a SCS to attain standards, rather than providing for immediate compliance with the emission limitations that Dow was required to meet in 1975, the revision does not satisfy the statutory requirements and cannot be approved by USEPA.

5. Health Effects From Use of Supplementary Control System as Compared to Continuous Emission Controls

Dow submitted various opinions from individuals concerning the health and welfare effects to be gained by requiring Dow to implement continuous emission controls as opposed to permitting Dow to continue to use its SCS to keep from violating the SO_2 NAAQS. DOW claims that "no significant health effects will be prevented by controlling DOW-Midland SO_2 emissions below the SCS level." Congress considered health and welfare effects in passing the Clean Air Act Amendments of 1970 and 1977. Congress determined that use of dispersion techniques may result in adverse health and welfare impacts hundreds of miles from a source and therefore required use of continuous emission reduction technology to attain the standards. See H.R. Rep. No. 95-294, 95th Cong. 1st. Sess. (1977) at 79-94. USEPA has no authority to override that congressional judgment.

The comments of American Lung Association of Michigan have been addressed in USEPA's response to Dow's comments with the exception of No. 4 which asserted that the proposed SIP revision does not provide for emission monitoring as required in Section 114(a) of

the Act and in State regulations. Section 114(a)(1) of the Act provides the Administrator with discretionary authority to require a source to perform in-stack monitoring of emissions in order to assist in the determination of whether or not compliance is being achieved.

American Lung also cites Michigan rules which require in-stack monitoring as a condition for obtaining relief from sulfur emission limits beyond 1980. The discretionary authority found in Section 114(a)(1) is not applicable to this situation inasmuch as it does not establish criteria for SIP approval or disapproval. In addition, State requirements for extending compliance dates are a matter of State law and do not establish Federal requirements for the approval or disapproval of a SIP by USEPA.

USEPA has determined the proposed SIP revision, Consent Order No. 01-1979, dated February 13, 1979, lacks a demonstration that the primary and secondary National Ambient Air Quality Standards will be attained and maintained without use of a supplementary or intermittent control system, does not provide for continuous emission reduction, and does not contain emission limitations for sulfur dioxide and particulates.

Therefore, the revision is disapproved as not complying with the requirements of Sections 110(a)(2) and (3). (42 U.S.C. 7410(a)(2) and (3)).

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations as "specialized." I have reviewed this

regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Final Rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended (42 U.S.C. 7410, *et. seq.*)

Dated: March 18, 1980

Douglas Costle,
Administrator.

[FR Doc. 80-8980 Filed 3-25-80; 8:45 am]

BILLING CODE 6560-01-M

NON-FULLY OWNED SUBSIDIARIES AND AFFILIATES OF THE DOW CHEMICAL COMPANY AS OF FEBRUARY 28, 1981

Subsidiaries and affiliates owned both directly and indirectly have been included. The company underlined is the direct owner of the companies listed below it. "Dow's" percent ownership is indicated by each company.

SUBSIDIARIES

The Dow Chemical Company

Gruppo Lepetit S.p.A. (92%)
L.I.F.E. (Laboratorios Industriales Farmaceuticos Ecuatorianos) (59%)
Laboratorios L.I.F.E. del Salvador S.A. (100%)
Negocios e Industrias S.A. "Neisa" (100%)
Pacific Chemical Berhad (51%)
Propenasa-Produtos Petroquimicos Nacionais S.A. (80%)
Ivon Watkins-Dow Ltd (51%)
Dow Banking Corporation (76%)

Administration de Participations Etrangeres S.A. (A.P.E. owned 100% by Gruppo)

Lepetit Pharmaghreb (65%)
Lepetit S.A. (France) (99%)
Lepetit (Thailand) Company Ltd (83%)
Lepetit Iran S.A. (93%) (No longer controlled or consolidated by The Dow Chemical Company)

Dow Chemical A.G. (A.G. owned 100% by The Dow Chemical Company)

Dow Chemical Iberica S.A. (99%)
Petroquimica-Dow S.A. (70%)

AFFILIATES

The Dow Chemical Company

Arabian Chemical Company (50%)
Cordis Dow Corporation (50%)
Dow Corning Corporation (50%)
The D-H Titanium Company (50%)
Dowell Schlumberger Corporation (50%)
Compagnie des Services Dowell Schlumberger (50%)
El Dorado Terminals Company (50%)
The Kartridge Pak Company (50%)
Korea Pacific Chemical Corporation (50%)
AgroQuim Maringa (20%)
Bank Mendes Gans (29%)
Chemi-Trol Chemical Company (23%)
DINA (49%)
DOKI (49%)
Estireno Del Zulia C.A. (25%)
Ibafon Chemical Ltd (40%)
Oasis Pipeline Company (30%)
Package Machinery Company (28%)
Piramides Brazil (22%)
Spuma Pac Cia Brasilerira (41%)
Top Drilling, Inc (33%)
Total Raffinaderij Nederland N.V. (20%)
Zoo Agro de Venezuela C.A. (49%)

Dow Chemical A.G.

Asahi-Dow Limited (50%)
Polychem Ltd (25%)

Coral Navigation (Coral is owned 100% by The Dow Chemical Company)

Chief Shipping Company (50%)

Dow Chemical Company Ltd (Ltd is 100% owned by Dow Chemical A.G.)

Cromarty Petroleum Company Ltd (50%)

Bio-Science Enterprises (Bio-Science is 100% owned by The Dow Chemical Company)

Teijin Bio-Science (50%)
Bio-Ciencia/Lavosier Analysis Clinicas (49%)

Dow Chemical of Canada Ltd (Canada is 100% owned by The Dow Chemical Company)

Lawrason's Chemical, Ltd (20%)
Wabiskaw Explorations Limited (50%)

Maligne Resources Limited (Maligne is 100% owned by Dow Chemical of Canada Ltd)

MT Partnership (50%)

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[3] Health and Welfare Benefits of Continuous Control of Sulfur Dioxide emissions, prepared for Dow Chemical Co., November 17, 1978.

1. Requirements of Section 110(a)(3)(A) and Sections 302(k) and 302(m) of the Clean Air Act

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[7] 41 FR 7450, Stack Height Increase Guildlines issued February 18, 1976; Notice of Violation EPA-5-77-A-13 issued November 18, 1976 by James O. McDonald, Director of Enforcement, Region V, USEPA; Answer of MAPCC to Dow's Complaint filed in *Dow Chemical Co. v. Reizen, et al.*, Michigan Court of Appeals No. 77-4792, United States District Court, Western District of Michigan, Southern Division (December, 1977), and USEPA correspondence with Dow in 1977.

monitoring techniques which cannot be affected by any dispersion techniques as defined by Section 123 of the Act. The February 14, 1979, Consent Order submitted as a proposed SIP revision does not contain this demonstration. Because the proposed revision permits Dow to use a SCS to attain standards, rather than providing for immediate compliance with the emission limitations that Dow was required to meet in 1975, the revision does not satisfy the statutory requirements and cannot be approved by USEPA.

5. Health Effects From Use of Supplementary Control System as Compared to Continuous Emission Controls

Dow submitted various opinions from individuals concerning the health and welfare effects to be gained by requiring Dow to implement continuous emission controls as opposed to permitting Dow to continue to use its SCS to keep from violating the SO_2 NAAQS. DOW claims that "no significant health effects will be prevented by controlling DOW-Midland SO_2 emissions below the SCS level." Congress considered health and welfare effects in passing the Clean Air Act Amendments of 1970 and 1977. Congress determined that use of dispersion techniques may result in adverse health and welfare impacts hundreds of miles from a source and therefore required use of continuous emission reduction technology to attain the standards. See H.R. Rep. No. 95-294, 95th Cong. 1st. Sess. (1977) at 79-94. USEPA has no authority to override that congressional judgment.

The comments of American Lung Association of Michigan have been addressed in USEPA's response to Dow's comments with the exception of No. 4 which asserted that the proposed SIP revision does not provide for emission monitoring as required in Section 114(a) of

the Act and in State regulations. Section 114(a)(1) of the Act provides the Administrator with discretionary authority to require a source to perform in-stack monitoring of emissions in order to assist in the determination of whether or not compliance is being achieved.

American Lung also cites Michigan rules which require in-stack monitoring as a condition for obtaining relief from sulfur emission limits beyond 1980. The discretionary authority found in Section 114(a)(1) is not applicable to this situation inasmuch as it does not establish criteria for SIP approval or disapproval. In addition, State requirements for extending compliance dates are a matter of State law and do not establish Federal requirements for the approval or disapproval of a SIP by USEPA.

USEPA has determined the proposed SIP revision, Consent Order No. 01-1979, dated February 13, 1979, lacks a demonstration that the primary and secondary National Ambient Air Quality Standards will be attained and maintained without use of a supplementary or intermittent control system, does not provide for continuous emission reduction, and does not contain emission limitations for sulfur dioxide and particulates.

Therefore, the revision is disapproved as not complying with the requirements of Sections 110(a)(2) and (3). (42 U.S.C. 7410(a)(2) and (3)).

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations as "specialized." I have reviewed this

regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Final Rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended (42 U.S.C. 7410, *et. seq.*)

Dated: March 18, 1980

Douglas Costle,
Administrator.

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